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 MISSION SAN JOSE AIRPORT, LLC,
 AND MISSION YOGURT, INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

AREAS USA SJ, LLC, a California limited
 liability company,

Plaintiff,

vs.

MISSION SAN JOSE AIRPORT, LLC, a
 Colorado limited liability corporation; and
 MISSION YOGURT, INC., a Colorado
 corporation,

Defendants.

and related Counterclaim.

CASE NO. C11-04487 HRL

**JOINT PRETRIAL STATEMENT AND
 REPORT**

Magistrate Judge: Hon. Howard Lloyd

Complaint filed: September 9, 2011
 Trial Date: January 7, 2013

JOINT PRETRIAL STATEMENT AND REPORT

Pursuant to the Court's "Standing Order Re: Pretrial Preparation" ("Standing Order") Plaintiff Areas USA SJC, LLC ("Areas") and Defendants/Counterclaimants Mission San Jose Airport, LLC and Mission Yogurt (collectively "Mission") hereby submit their Joint Pretrial Report.

A. IN-PERSON CONFERENCE

The Standing Order provides that, not less than fifteen days prior to the Pretrial Conference, lead counsel shall meet and confer in person with respect to accomplishing the requirements and procedures outlined in the Standing Order. That in-person meet and confer occurred on November 30, 2012, at the San Francisco offices of Greenberg Traurig, LLP. Areas was represented by Scott D. Bertzyk and Denise Mayo of the law firm Greenberg Traurig, LLP. Mission was represented by Daniel Rockey of the law firm Bryan Cave LLP. The results of the parties' discussions are reflected in this Joint Pretrial Statement and Report.

B. SUBMISSIONS DUE TEN COURT DAYS PRIOR TO THE PRE-TRIAL CONFERENCE

Section B of the Standing Order envisions the mandatory or optional filing of various matters enumerated therein. Certain of those filings are attached to this Joint Report; others are filed separately.

1. Trial Briefs (optional)

Inasmuch as (i) this is a jury trial, (ii) the parties already have extensively briefed their primary positions as to the law and facts in connection with Areas' summary judgment motion, and (iii) principle evidentiary issues will be briefed in motions *in limine*, the parties jointly have agreed that separate trial briefs are not necessary and will be dispensed with.

2. Motions in Limine

Motions *in limine* will be filed concurrently herewith. The parties have met and conferred over these motions.

3. Deposition and Discovery Responses

As required, each side will lodge with the Court "one copy of any deposition transcript and any other discovery response [it] intends to offer as evidence, other than solely for impeachment or

1 rebuttal.” As required, the lodged materials will be highlighted to indicate the pertinent portions of
 2 the deposition transcripts and discovery responses being offered.

3 **4. Proposed Voir Dire Questions**

4 As required, each side will lodge its proposed voir dire questions, if any.

5 **5. Jury Instructions**

6 A joint set of substantive instructions proposed by the parties will be lodged concurrently
 7 herewith. As directed, the parties have not submitted proposed preliminary or closing instructions.
 8 The instructions will be marked as required by the Standing Order.

9 **6. Verdict Forms**

10 As required, each side will serve and submit to the Court its proposed form of verdict.

11 **7. Proposed Findings of Fact and Conclusions of Law**

12 Not applicable.

13 **8. Joint Pretrial Statement.**

14 The materials specifically required by the Joint Pretrial Statement are set forth below.

15 **a. Substance of Action**

16 Plaintiff Areas is a limited liability company formed under the laws of the State of California,
 17 with its principal place of business located in Florida. Areas — whose parent company, Areas USA,
 18 Inc., specializes in operating food, beverage, and retail services in airports throughout the country —
 19 has the right to operate concessions in Terminals A and B of the Norman Y. Mineta San Jose
 20 International Airport and/or enter into subconcession agreements with other concessionaries,
 21 pursuant to a Prime Contract effective January 29, 2009.

22 Defendant Mission San Jose Airport is a limited liability company formed under the laws of
 23 the State of Colorado, with its principal place of business located in Westminster, Colorado.
 24 Mission San Jose Airport’s sole member is Co-Defendant Mission Yogurt, a corporation formed
 25 under the laws of the State of Colorado, with its principal place of business also located in
 26 Westminster, Colorado.

27 Ultimately, Mission became the sublessee of Areas as to two spaces in the San Jose
 28 International Airport: (i) a space in Terminal B called San Jose Joe’s; and (ii) a space in Terminal A

commonly denominated as space TA-21 (the "Premises"). San Jose Joe's is built out and operating; the Terminal A space has not been built out and is not operating. This lawsuit revolves around claims and defenses over the Terminal A space.

Areas and Mission San Jose Airport entered into a Concession Subcontract for the Terminal A Premises, effective as of June 30, 2010; in essence, the Concession Subcontract provides that Mission San Jose Airport would lease and operate concessions in the Premises, for which Areas is the prime concessionaire. Mission Yogurt in turn executed a written Guaranty of the Concession Subcontract.

Mission San Jose Airport has not completed development of the Premises and has not paid to Areas any management fees, concession fees, late fees, or other payments described in the Concession Subcontract. Mission Yogurt, as guarantor of the Concession Subcontract, has not paid any fees to Areas either. Mission asserts a counterclaim for fraud in the inducement, and asserts various affirmative defenses to contract performance and validity, including fraud in the inducement, excuse of performance, illusory contract, failure to mitigate and unconscionability. Areas denies Mission's claim of fraud in the inducement, disputes Mission's defenses, and seeks breach of contract damages.

b. Stipulations, Agreed Statement and Undisputed Facts

Documents. For purposes of trial, the parties stipulate to the authenticity of the following documents:

1. Documents produced by Areas, denominated by the prefix AUSA and in the Bates range of AUSA 000001-002199;
2. Documents produced by Mission, denominated by the prefix MSJC, and in the Bates range of MSJC 000001-000775;
3. Documents produced by the Legends Group, denominated by the prefix LG, and in the Bates range of LG 000001-000072;
4. Documents produced by Reddy & Reddy Architects, denominated by the prefix RRA, and in the Bates range of RRA 000001-000087;

- 1 5. Documents produced by the Airport, denominated by the prefix SJC, and in the Bates
2 range of SJC 000001-000155;
- 3 6. Documents produced by Hensel Phelps Construction Company (be it to Areas or to
4 Mission). Hensel Phelps made two productions. Its production to Areas is
5 denominated by the prefix HP, and has a Bates range of HP 000001-000033; its
6 production to Mission is denominated by the prefix HPCC, and has a Bates range of
7 HPCC 000001-000275;
- 8 7. Documents produced by Fresh Choice, denominated by the prefix FC, and in the
9 Bates range of FC 000001-000189;
- 10 8. Documents produced by Togo's, denominated by the prefix TG, and in the Bates
11 range of TG 000001-000831;
- 12 9. Documents produced by Airport Consult Group, denominated by the prefix ACG, and
13 in the Bates range of ACG 000001-000201;
- 14 10. Documents produced by Fentress Architects, denominated by the prefix FA, and in
15 the Bates range of FA 000001-000172;
- 16 11. Documents produced by D-Lew Enterprises, denominated by the prefix DL, and in
17 the Bates range of DL 000001-000122;
- 18 12. Documents produced by Vision Builders, denominated by the prefix VB, and in the
19 Bates range of VB 000001-000021;
- 20 13. Documents produced by JDDA Concession Management, Inc., denominated by the
21 prefix JDDA, and in the Bates range of JDDA 000001-000044.

22 Once trial exhibits have been designated, and in advance of the pre-trial conference, the
23 parties will meet and confer to determine whether designated exhibits can be admitted into evidence
24 either for all purposes or for a limited purpose (such as, in the case of hearsay documents, for the
25 purpose of notice). The parties agree that, to the extent they cannot agree on the admissibility of
26 certain documents, deposition transcript designations may be supplemented for purposes of
27 providing the foundations facts upon which admission would be offered.

1 **Facts.** For purposes of trial, the following facts shall be deemed established without further
2 proof. These stipulations are made without prejudice to the right of the parties, during the course of
3 witness examinations, to present facts consistent with these stipulations in order to provide context
4 to the jury.

5 1. Effective January 29, 2009, Areas and the City of San Jose entered into that certain
6 “Food and Beverage Concencession Agreement,” hereinafter, the “Prime Contract,” which is Exhibit
7 157 and may be admitted into evidence. Among other things, the Prime Contract gave Areas the
8 right to operate concessions in certain designated spaces in Terminals A and B of the Norman Y.
9 Mineta San Jose International Airport (hereinafter, “Airport” or “San Jose Airport”) and/or to enter
10 into subconcession agreements with other concessionaries. One of those spaces was a space in
11 Terminal A denominated as space TA-21.

12 2. Sometime after entering into the Prime Contract with Areas, the Airport installed a
13 baggage handling system, which included expensive CTX machines, on the first floor of Terminal
14 A. The baggage handling system (including CTX machines) was under the space that had been
15 denominated as TA-21.

16 3. The precise configuration of the space denominated by the Airport as TA-21 changed
17 effective February 18, 2010. Exhibit 122 reflects the original configuration and may be admitted
18 into evidence. On March 5, 2010, the Airport submitted to Areas revised lease drawings to reflect
19 the final configuration. That complete e-mail chain, with drawings, has been produced by Mission
20 (Trial Ex. 29), Mission’s architects (Trial Ex. 7), and Areas (Trial Ex. 158). All three exhibits may
21 be admitted into evidence. Exhibits 4-6 also reflect the final location of the TA-21 space and may be
22 admitted into evidence.

23 4. Through its President, Rod Tafoya, Mission Yogurt, which was then based only in
24 Denver, Colorado, had expressed an interest in expanding its concession operations into California.
25 In the Spring of 2010, Areas’ Huy Pham advised Tafoya that two concession spaces in the Airport
26 were available: (i) a space in Terminal B called San Jose Joe’s; and (ii) the TA-21 space. The San
27 Jose Joe’s space already had been fully designed and was in the process of being built out, but the
28 subconcessionaire (D-Lew Enterprises, LLC) then responsible for the space had expressed a desire

1 to divest itself of the concession. The TA-21 space had not been designed or built-out, and was
2 vacant.

3 5. Mission representatives traveled to San Jose in April 2010 to inspect the two
4 available spaces. Ultimately, Mission agreed to assume D-Lew Enterprises' obligations as to the
5 San Jose Joe's location in Terminal B, and to sublease the vacant TA-21 space. The following
6 contract documents reflect the assignment to Mission of the San Jose Joe's space in Terminal B, and
7 may be admitted into evidence: Exhibit 30 (Assignment Agreement between Mission and D-Lew
8 Enterprises for the San Jose Joe's space), Exhibit 31 (Assignment of Concession Subcontract
9 between Mission and D-Lew Enterprises for the San Jose Joe's space), Exhibit 171 (Concession
10 Subcontract between Mission and D-Lew assigned to Mission San Jose Airport) and Exhibit 32
11 (Assignment of License Agreement between Mission and D-Lew Enterprises for the San Jose Joe's
12 space). In connection with the TA-21 space, Areas and Mission San Jose Airport entered into a
13 Concession Subcontract for the Terminal A Premises (Trial Ex. 35); in essence, the Concession
14 Subcontract provided that Mission San Jose Airport would lease and operate concessions in the
15 Premises (defined in the contract), for which Areas is the prime concessionaire. Mission Yogurt in
16 turn executed a written Guaranty of the Concession Subcontract (Trial Ex. 36). Exhibits 35 and 36
17 also may be admitted into evidence.

18 6. The Concession Subcontract and Guaranty became fully executed in early August,
19 2010.

20 7. Mission has not built out the TA-21 space.

21 8. Mission San Jose Airport has not made any of the payments, or posted a letter of
22 credit, as specified in the Subcontract. Mission Yogurt has not made any payments under its
23 Guaranty. The Mission defendants assert defense to performance and the validity of the Concession
24 Subcontract and Guaranty.

25 **c. Principal Factual Issues in Dispute**

26 **Contract Claims.** Mission does not dispute that Mission San Jose executed the Concession
27 Subcontract and that Mission Yogurt executed the Guaranty in issue here. Mission also agrees that:
28 (i) Mission San Jose Airport has not made any of the payments, or posted a letter of credit, as

specified in the Subcontract; and (ii) Mission Yogurt has not made any payments under its Guaranty. Mission does dispute whether these contracts ever were formed based on its asserted defense of fraud in the inducement and a further defense Mission has asked this Court to allow (mistake). Mission further contends that its performance was excused based on various affirmative defenses. Additionally, insofar as contracts are concerned, the parties dispute the meaning of certain provisions of the Concession Subcontract. Ultimately, unless there is a factual dispute based on admissible parol evidence, interpretation of such term or terms will present issues of law for the Court.

Fraud in the Inducement Defense and Claim. Areas disputes each and every element of Mission's fraud in the inducement claim, both as to claims of misrepresentation and claims of concealment, as well as Mission's other affirmative defenses.

d. Principal Disputed Legal Issues

The elements of breach of contract and fraud in the inducement claims are well-settled. So, the principal legal issues in dispute in this action are set forth in the Parties' pleadings, and include:

Areas' Issues

1. Interpretation of section 22 of the Concession Subcontract and the extent to which parol evidence may be admitted, provisionally or otherwise, to resolve interpretation issues.
2. The extent to which Areas had a duty of disclosure under the facts and circumstances of this case.
3. The extent to which Mission is deemed to have contractually assumed the risks of which it now complains under the circumstances of this case.
4. Whether Mission, under the facts and circumstances of the case, may its San Jose Joe's concession if it divests itself of the TA-21 space. (This may present a mixed question of fact and law.)

Mission's Issues

Mission adds the following legal issues:

1 1. Interpretation of Paragraph 1 of the Concession Subcontract (depending upon the
2 outcome of Mission's motion for leave to amend) and the extent to which parol evidence may be
3 admitted, provisionally or otherwise, to resolve interpretation issues.

4 2. Whether Mission is entitled to recover attorneys' fees pursuant to Civil Code section
5 1717 or the "tort of another" doctrine should it prevail;

6 3. The ability of a commercial liability insurance provider to rescind coverage based on
7 a policyholder's failure to disclose a material risk pursuant to Cal. Ins. § 330 *et seq.* and applicable
8 decisional law.

9 4. To the extent the parties are unable to agree on particular jury instructions for Areas'
10 claims, Mission's counterclaim or affirmative defenses, the Court may be called upon to resolve any
11 disagreement.

12 **e. Deposition Excerpts and Discovery Responses**

13 Areas' and Mission's lists of deposition excerpts and discovery responses the parties may
14 offer at trial, other than for impeachment or rebuttal, are attached as Exhibits 1 (Areas) and 2
15 (Mission).

16 **f. Witnesses to Be Called**

17 The Standing Order requires: "Pursuant to Fed. R. Civ. P. 26(a)(3), a list of the name of
18 every witness each party expects to call at trial, other than solely for impeachment or rebuttal,
19 together with a brief statement following each name describing the substance of the testimony to be
20 given. Each party shall separately identify those witnesses the party intends to call and those the
21 party may call if the need arises. Areas' and Mission's witness lists in this regard are attached as
22 Exhibits 3 (Areas) and 4 (Mission).

23 **g. Exhibits, Schedules and Summaries**

24 The Standing Order requires: "Pursuant to Fed. R. Civ. P. 26(a)(3), a list of all documents
25 and other items to be offered as exhibits at trial, other than solely for impeachment or rebuttal. Each
26 item on the list shall be identified by an exhibit number, followed by a brief statement describing its
27 substance or purpose, and the identity of the sponsoring witness. The parties must have agreed on an
28 allocation of exhibit numbers which will avoid duplicate numbers." The parties agreed early on to

number deposition exhibits consecutively, and to assign those same exhibit numbers as trial exhibits.

To that end, the parties have, as of the date of this Pretrial Statement, assigned Exhibit Nos. 1-156.

The Parties further have agreed that any further exhibits Areas may designate shall start with Exhibit No. 157, and further exhibits Mission may designate shall start with Exhibit No. 250. This may leave a small gap, but will avoid any duplicate numbers.

Areas' and Mission's exhibit lists in compliance with the Standing Order are attached as Exhibits 5 (Areas) and 6 (Mission). The parties already have agreed on authenticity and the admission of some exhibits. Once these exhibit lists have been exchanged, the parties will attempt to reach further agreements as to admissibility.

h. Relief Prayed

Areas

Areas prays for a judgment declaring Mission to be in breach of the Concession Subcontract and Guaranty, and imposing the following damages jointly and severally on them:

Initial Investment	\$ 1,215,959.12
Mid-term Refurbishment	303,989.78
Additional Payment	105,000.00
E & I Fees	45,522.22
Management Fee (through Jan. 1, 2013)	10,000.00
Management Fee (accelerated)	40,000.00
Concession Fee (through Jan. 1, 2013)	420,000.00
Concession Fee (accelerated)	1,575,000.00
TOTAL	\$ 3,715,471.12

Under its contracts, Areas also would seek to recover its prevailing party attorneys' fees. Although Areas may prove such fees as special damages at trial, it presently intends to seek recovery of its fees and costs by way of post-trial motion and memorandum of costs.

Mission

Mission prays for a judgment finding Areas liable for fraud and awarding Mission damages, subject to proof at trial, as follows:

1 a. Costs incurred in developing designs and a construction plan for TA-21; and

2 b. Lost profits.

3 Mission will further seek an award of punitive (exemplary) damages on its fraud claim.

4 In the alternative, Mission prays for a judgment of no liability on Areas' claim for breach of
5 contract.

6 Should Mission prevail on either its affirmative claim for fraud or its defenses, Mission will
7 seek to recover prevailing party attorneys' fees and costs pursuant to the Concession Subcontract,
8 Civil Code §1717 and relevant decisional law, and attorneys' fees incurred in connection with its
9 efforts to work with the Airport under the "tort of another" doctrine.

10 **i. Estimate of Trial Time**

11 Until motions in limine are resolved, it will be difficult to predict trial time with precision.
12 The parties' present best estimate is that trial should be completed within ten full court days.

13 **j. Amendments, Dismissals**

14 Areas does not have any amendments to its operative complaint. Mission has previously
15 moved for leave to amend its Second Amended Answer and Counterclaims to assert a claim for
16 breach of contract. Mission's proposed allegations are set forth in its moving papers. The Motion,
17 which Areas' opposes, is set for hearing on December 4, 2012. Mission also will request leave to
18 amend its operative Answer to include affirmative defenses for unilateral and mutual mistake of fact
19 to conform to the evidence. Areas opposes this latter request as well.

20 **k. Settlement Discussion**

21 With the aid of a Court-appointed mediator, the parties held an early mediation in February
22 2012. It failed. Separately, in April 2012, the parties met with Airport (and without litigation
23 counsel) to explore settlement prospects again. Those efforts failed. The parties' principals were
24 tentatively scheduled to meet in the Fall to explore settlement once more, but Mission postponed that
25 tentative meeting after Areas filed a motion for summary judgment. It is anticipated that the parties'
26 principals, working with counsel who negotiated the Concession Subcontract and Guaranty, will
27 continue to explore settlement options and prospects.

1 **I. Miscellaneous**

2 Nothing at this time.

3 Dated: December 4, 2012

GREENBERG TRAURIG, LLP

4
5 By: /s/ Scott D. Bertzyk
6 Scott D. Bertzyk
7 Attorneys for Plaintiff and Counter-Defendant,
8 AREAS USA SJC, LLC

9
10 Dated: December 4, 2012

BRYAN CAVE, LLP

11 By: /s/ Daniel T. Rockey
12 Daniel T. Rockey
13 Attorneys for Defendants and Counter-Claimants
14 MISSION SAN JOSE AIRPORT, LLC and MISSION
15 YOGURT, INC.

16 **ATTESTATION CLAUSE**

17 I, Denise M. Mayo, am the ECF User whose ID and password are being used to file this
18 JOINT PRETRIAL STATEMENT AND REPORT. In compliance with General Order 45, X.B., I
19 hereby attest that Daniel T. Rockey has concurred in this filing.

20 Date: December 4, 2012

GREENBERG TRAURIG LLP

21 By: /s/ Denise M. Mayo
22 Denise M. Mayo

JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 1

1 GREENBERG TRAURIG, LLP
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AREAS USA SJC, LLC
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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 AREAS USA SJC, LLC, a California
15 limited liability company,

16 Plaintiff,

17 vs.

18 MISSION SAN JOSE AIRPORT, LLC, a
19 Colorado limited liability corporation; and
20 MISSION YOGURT, INC., a Colorado
corporation,

21 Defendants.
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CASE NO. C11-04487 HRL

PLAINTIFF AREAS USA SJC, LLC'S
DESIGNATED DISCOVERY RESPONSES
AND DEPOSITION EXCERPTS TO BE
OFFERED AT TRIAL

Complaint filed: September 9, 2011
Trial date: January 7, 2013

PLAINTIFF'S DESIGNATED DISCOVERY RESPONSES
AND DEPOSITION EXCERPTS FOR TRIAL

In accordance with the Court's Standing Order re: Pretrial Preparation, plaintiff Areas USA SJC, LLC submits this list of discovery responses and deposition excerpts Areas intends to offer at trial.

DISCOVERY RESPONSES

1. From Defendants Mission San Jose Airport, LLC and Mission Yogurt, Inc.'s ("Mission") Responses and Objections to Plaintiff's First Set of Interrogatories, served on March 30, 2012, Responses to Interrogatory Nos. 1-3.

2. From Mission's Amended Responses and Objections to Plaintiff's First Set of Interrogatories, served on May 29, 2012, Responses to Interrogatory Nos. 1-3.

3. From Mission's Further Amended Responses and Objections to Plaintiff's First Set of Interrogatories, served on September 10, 2012, Responses to Interrogatory Nos. 1-3.

4. From Mission's Responses and Objections to Plaintiff's Third Set of Interrogatories, served on June 11, 2012, Response to Interrogatory No. 7.

5. From Mission's Responses and Objections to Plaintiff's First Set of Requests for Production, served on March 30, 2012, Responses to Request for Production Nos. 4, 10-23, and 29.

DEPOSITIONS

Areas presently intends to play the videotaped excerpts of the depositions of certain individuals, as indicated below. For each witness, Areas' intent is to play the excerpts in the order indicated. Areas has yet to decide on the order of the witnesses themselves.

1. From the transcript of deposition of Justin Jackson, taken on September 21, 2012:

<u>Begin Page/Line</u>	<u>End Page/Line</u>
7:16	8:8
37:12	37:21
34:20	35:21
9:1	9:14
11:2	11:4
27:25	28:18

18:7	18:13
92:1	92:18
94:23	95:9
24:1	24:2
77:8	77:11
60:4	62:11
65:12	65:25
19:8	20:11
81:23	82:22
85:8	86:9
48:16	49:1
84:4	85:6

2. From the transcript of deposition of Stanley Jackson, taken on September 20, 2012:

<u>Begin Page/Line</u>	<u>End Page/Line</u>
108:16	109:10
17:8	17:24
15:12	15:22
161:22	162:1
8:9	8:16
43:15	43:22
44:5	44:11
30:3	30:12
89:10	89:25
18:20	20:9

21:6	21:11
66:25	67:11
114:14	116:25
35:23	36:3
37:10	37:20
127:12	127:21
128:23	129:12
46:19	46:25
47:7	47:24
107:17	107:23
96:7	96:11
97:10	97:12
99:3	100:6
156:14	157:8
86:20	87:13
88:4	88:12
101:3	101:8
102:2	102:24
145:18	146:11
55:6	55:14
56:2	56:12

3. From the transcript of deposition of Jeffry Reddy, taken on August 22, 2012:

<u>Begin Page/Line</u>	<u>End Page/Line</u>
6:18	9:15

11:5	11:20
12:2	12:8
18:24	19:13
23:9	24:10
21:1	22:18
43:23	44:22
28:11	29:13
17:1	17:4
30:11	30:25
32:20	32:25
39:23	40:5
33:3	33:8
34:3	34:11
34:17	34:25
35:10	35:16
35:21	35:25

4. From the transcript of deposition of Mark Schafer, taken on August 22, 2012:

<u>Begin Page/Line</u>	<u>End Page/Line</u>
8:6	8:15
20:11	21:9
51:14	52:15
:	:
24:10	24:14
24:25	25:16
26:1	26:11

26:18	27:11
63:18	63:24
46:8	46:24
50:16	51:6

5. From the transcript of deposition of Roderick Tafoya, taken on August 23, 2012:

<u>Begin Page/Line</u>	<u>End Page/Line</u>
16:6	16:11
16:20	17:22
19:9	19:13
19:25	20:2
25:14	26:6
32:22	33:5
36:8	36:21
44:4	44:9
42:19	42:23
59:25	60:11
121:25	123:6
50:7	51:4
51:8	52:9
53:18	53:22
48:8	48:14
55:7	56:13
65:10	66:8
9:20	10:5
12:13	12:20
72:13	72:25
67:11	68:5
76:17	76:23

66:15	67:10
30:5	30:10
31:2	31:11
79:11	79:22
64:1	65:1
138:12	138:16
138:1	138:8
116:16	117:24
119:2	119:15
133:19	134:7
147:23	147:25
151:10	151:15
155:18	155:25
161:19	162:4
142:22	143:12
140:2	140:7
141:9	141:15
142:1	142:20

These designations are made on the assumption that Mission will stipulate to the admission of basic exhibits, such that Areas will not have to burden the Court and jury by playing or reading excerpts that establish a foundation for admission of exhibits whose introduction Areas expects Mission to stipulate to. Should Mission be unreasonable in this regard, Areas reserves the right to designate such additional excerpts as are necessary to secure introduction of exhibits.

1 These designations are made based upon Areas' best belief as to the issues to be tried in this
2 case, but they do come before this Court has held the Pre-Trial Conference, ruled on motions in limine
3 and/or otherwise defined the scope of the case. After the conclusion of such matters (i.e., as things
4 become clarified_, Areas may conclude that certain excerpts no longer are necessary or that other
5 excerpts should be added. In that eventuality, Areas will seek leave of Court to supplement these
6 designations.

7
8 Dated: December 4, 2012

GREENBERG TRAURIG, LLP

9 By: /s/ Denise M. Mayo
10 Denise M. Mayo
11 Attorneys for Plaintiff,
12 AREAS USA SJC, LLC
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JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 2

1 Meryl Macklin (CA State Bar No. 115053)
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7 Attorneys for Defendants:
MISSION SAN JOSE AIRPORT, LLC and MISSION YOGURT, INC.
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 AREAS USA SJC, LLC, a California limited
12 liability company,

13 Plaintiff,

14 v.

15 MISSION SAN JOSE AIRPORT, LLC, a
16 Colorado limited liability company, and
MISSION YOGURT, INC., a Colorado
17 corporation,

18 Defendants.

CASE NO. CV11-04487 HRL

**MISSION SAN JOSE AIRPORT, LLC AND
MISSION YOGURT, INC.'S
DESIGNATION OF DEPOSITION
TESTIMONY AND DISCOVERY**

**Complaint Filed: September 9, 2011
Trial Date: January 7, 2013**

Deposition Testimony

Deponent	Date	Designation
Nudell, J. Howard	11/13/2012	9:21-10:9
		10:20-11:8
		12:12-19
		12:23-13:6
		15:15-18
		17:1-13
		17:15-19
		20:10-14
		31:13-21
		31:23-32:7
		32:11-14
		32:20-33:6
		33:17-34:2
		40:17-19 (beginning at "Is it your")
		41:7-11
		41:23-42:6
		42:25-43:3 (beginning at "Now")
		43:13-17
		44:2-9
		46:21-23
		47:2-4
		49:6-14
		49:16-20
		49:25-50:3 (beginning at "Without")
		50:11-14
		50:16-18

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Deponent	Date	Designation
Nudell, J. Howard (continued)	11/13/2012	51:9-12
		52:16-53:1
		56:18-20
		57:1-3
		58:20-24
		59:9-12
		60:6-8
		60:11-13
		62:4-10
		62:16-23
		63:15-17
		64:5-15
		65:6-9
		65:18-20
		65:22-23
		67:15-24 (beginning at "Due to")
		68:6-9
		68:11-12
		69:13-15
		69:17-20
		70:6-18
		70:20-71:6
		71:8-10
		71:13-16
		71:20-25
		72:9-13

Deponent	Date	Designation
Nudell, J. Howard (continued)	11/13/2012	72:16-22
		74:2-7
		74:25-76:2 (beginning at "Did you")
		76:7-10 (beginning at "Would it")
		76: 15-16
		77:4-15
		78:15-79:1
		79:11-22
		80:9-17
		81:2-6
		81:18-23
		81:25-82:5
		83:17-19
		85:24-86:1
		87:25-88:2
		89:8-12
		92:3-16
		92:24-93:7
		93:23-25 (beginning at "Do you")
		94:21-95:4
		95:6-7
		98:23-99:1
		99:25-100:3
		100:5-7
		100:9
		101:1-4

Deponent	Date	Designation
Nudell, J. Howard (continued)	11/13/2012	104:11-105:3
		105:16-22
		106:2-7
		108:16-21
		108:23-24
		109:1-2
		109:12-110:6
		110:15-18
		110:22-111:5
		114:12-21 (beginning at "Did you")
		115:3-6
		115:10-13
		115:15
		117:16-19 (beginning at "Is the")
		118:7-15
		118:21-23
		118:25
		119:4-6
		119:8-9
		121:16-122:1 (beginning at "What you")
		122:22-24
		123:2-8
		129:2-14
		131:17-19
		131:21-132:7
		132:17-133:6

Deponent	Date	Designation
Nudell, J. Howard (continued)	11/13/2012	133:8-9
Pham, Huy	8/29/2012	12:12-17
		13:11-12
		14:4-6
		14:12-17
		14:18-15:13 (beginning at ("And what"))
		17:17-19
		17:23-18:10
		19:8-10
		19:16-22 (beginning at "And what ")
		26:3-23
		28:11-16
		51:14-18
		57:24-58:7 (beginning at "Let's turn")
		58:18-24 (beginning at "But, isn't")
		60:14-22
		61:3-10
		62:12-17
		64:19-24
		65:4-14 (beginning at "So, as")
		66:18-25
		78:2-5
		82:14-18
		82:22-83:7 (beginning at "Anyhow," ending at "appropriate people")
		87:25-88:2 (beginning at "Who told")

Deponent	Date	Designation
Pham, Huy (continued)	8/29/2012	88:4-6
		90:16-23
		91:14-17
		94:21-24
		99:4-10
		101:15-18
		102:13-18 (beginning at "and what")
		103:5-10
		105:3-11
		105:17-24
		106:1-19
		106:21-107:5
		107:10-11
		107:14-15
		109:5-9
		109:11-12
		109:14-16
		109:18-19
		109:21-24 (beginning at "On the")
		110:1
		111:19-21
		111:23-24
		112:4-8 (beginning at "Do you recall")
		112:10
		119:9-13 (beginning at "All I do")
		120:1-8

Deponent	Date	Designation
Pham, Huy (continued)	8/29/2012	121:14-20
		125:20-22
		125:24-25 (ending at "to do that")
		126:20-23 (beginning at "Do you")
		126:25-127:1
		129:9-13 (beginning at "You said"
		130:5-11 (ending at "Rod agreed")
		130:12-15 (beginning at "So, basically")
		131:12-18
		131:23-132:5 (beginning at "Do you")
		132:11-14 (beginning at "But, you")
		132:16
		143:22-144:3
		150:1-6 (beginning at "The intent is")
		150:23-151:1
		162:12-17
		162:22-25 (beginning at "But you," ending at "I don't")
		170:17-171:21
		182:14-20
		194:14-18 (beginning at "Let me")
		194:21-22
		197:5-7
		197:9-10
		207:12-13
		207:15-16

Deponent	Date	Designation
Pham, Huy (continued)	8/29/2012	207:18-20
		207:22-24 (ending at "remember reading")
		208:12-15
		208:17-20
		209:7-10
Reddy, Jeffrey S.	8/22/2012	6:18-7:7 (beginning at "I don't")
		7:11-24
		8:16-9:1
		11:9-12:5
		14:8-9 (ending at "did not")
		17:5-11
		20:4-23
		21:1-21
		21:25-22:5
		25:11-22 (beginning at "How about")
		32:20-25 (beginning at "Your best")
		33:9-21
		34:3-15
		35:1-7
		35:10-11 (beginning at "Looks like")
		35:14-19 (beginning at "This would")
		42:9-43:7 (beginning at "Do you")
		44:12-45:14 (ending at "down there")
		45:20-46:6
		46:9-14 (beginning at "And do you")
		46:15-23 (beginning at "you said")

Deponent	Date	Designation
Torello, Xavier Rabell	8/31/2012	15:8-9 (beginning at "Was it")
		15:11
		23:22-25
		24:2-7
		24:9
		24:24-25:9
		26:16-23
		27:14-16
		28:2-29:9
		29:11-14
		29:16
		29:18-20
		29:22
		29:24-30:1 (beginning at "Did you")
		30:3
		36:13-14 (beginning at "Were you")
		36:16-21
		37:4-10 (beginning at "And what")
		37:8-10
		37:13-17
		38:1-2 (beginning at "What exactly")
		38:4-8
		38:10-13
		38:15-18 (beginning at "And did")
		38:20
		38:22-39:1 (beginning at "Did you")

Deponent	Date	Designation
Torello, Xavier Rabell (continued)	8/31/2012	39:2-4 (beginning at "Why not")
		39:6-15
		39:17
		41:24-42:3 (beginning at "Did you")
		42:5
		44:8-10 (beginning at "The airport")
		45:3-10 (beginning at "Well, tell")
		45:11-13 (beginning at "And why")
		48:24
		49:2-3
		49:5-8
		49:10-17
		49:19-22
		49:24-25
		50:7-13
		56:20-24
		58:8-10
		58:12-17
		58:19-25
		59:3-6
		63:21-24 (beginning at "A part")
		64:1
		64:3-16
		64:17-21 (beginning at "Do you")
		64:23-24
		70:8-11 (beginning at "But wasn't")

Deponent	Date	Designation
Torello, Xavier Rabell (continued)	8/31/2012	70:13-20
		70:22
		73:21-74:2 (beginning at "Can you")
		74:9-16
		74:20-75:1 (beginning at "When you")
		75:4-11
		76:16-22
		76:24-25
		78:3-6
		78:8-10
		79:3-8 (beginning at "so the")
		79:15-18
		80:11-13
		80:15-22
		86:23-87:4
Uribe, Eduardo	8/30/2012	87:8-18
		87:20-21
		93:19-23
		8:13-14
		12:11-14
		12:16 (ending at "no")
		12:20-25
		13:10-14
		15:14-19 (beginning at "In your")
		15:21
		15:23-25

Deponent	Date	Designation
Uribe, Eduardo (continued)	8/30/2012	16:4-5
		16:7-10
		16:12
		16:14-21
		16:25-17:4
		17:14-17
		17:19-22
		19:10-20:10
		22:3-4 (beginning at "Were you")
		22:6-9
		22:11-16
		22:25-23:6 (beginning at "You see")
		24:24-25:2 (beginning at "Well, let's")
		25:4-20
		26:6-17
		26:19
		26:24-27:2
		27:4
		30:7-10
		30:12
		30:14
		30:16-22
		33:17-22
		33:24
		35:9-13 (beginning at "But, just")
		35:15

Deponent	Date	Designation
Uribe, Eduardo (continued)	8/30/2012	42:9-17 (beginning at "When you")
		44:22-25
		45:2
		47:4-7 (beginning at "And did")
		47:25-48:4
		48:6
		48:8-12 (beginning at "And what")
		48:14-15
		48:24-25 (beginning at "And did")
		49:2-4 (ending at "space was")
		51:4-8 (beginning at "You think")
		51:7-8
		51:10-12
		52:5-6
		52:8-9
		62:15-20 (beginning at "Why is it")
		63:10-16 (beginning at "Michael Levin")
		63:19
		70:3-5
		70:7 (ending at "Yes")
		74:24-75:1 (beginning at "And so")
		75:3
		77:15-20 (beginning at "And so")
		77:22-25
		81:11-14
		81:16

Deponent	Date	Designation
Uribe, Eduardo (continued)	8/30/2012	81:22
		82:8-11 (beginning at "So, in")
		84:10-12
		84:16-18
		84:20-22 (beginning at "But, it")
		84:24-85:2
		85:25-86:4 (beginning at "So I")
		86:8-11
		86:13
		88:14-17 (beginning at "Have you ever asked")
		88:19
		94:1-12 (beginning at "Is that")
		94:14
		95:16-18 (beginning at "Did you")
		95:20
		98:2-5 (beginning at "Independent of")
		98:8
		98:10-13 (beginning at "Did you")
		98:15
		98:17-20 (beginning at "Did anybody")
		98:22
		98:24-99:1 (beginning at "How about")
		99:3
		99:5-8 (beginning at "How about")
		99:10

Deponent	Date	Designation
Uribe, Eduardo (continued)	8/30/2012	99:12-15
		99:17
		99:19-22
		99:24
		101:6-11 (beginning at "So in the")
		101:17
		101:20-22
		101:24
		102:2
		107:13-15
		108:24-109:1 (ending at "no idea")
		117:14-16
		117:19
		117:21-23
		117:25 (ending at "forgot")
		121:6-9 (beginning at "Do you")
		138:8-12
		138:17-21 (beginning at "Is Areas")
		138:23-139:6
		160:7-11 (beginning at "And has," ending at "three months")
		160:13-15 (beginning at "So prior")
		160:17-18
		164:9-13 (beginning at "I'm trying")
		164:16
		164:18-24

Discovery

Document	Date	Designation
Areas' Supplemental Responses to Mission's Requests for Admission – Set 1	11/2/2012	3:5-8
		5:9-11
		5:14-15
		6:5-11
		7:4-5
		7:8
Areas' Supplemental Responses to Mission's Interrogatories – Set 3	10/31/2012	4:17-21
		5:4-5 (ending at "in question")

By: /s/ Daniel T. Rockey
Daniel T. Rockey

JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 3

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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 AREAS USA SJC, LLC, a California
15 limited liability company,

16 Plaintiff,

17 vs.

18 MISSION SAN JOSE AIRPORT, LLC, a
19 Colorado limited liability corporation; and
MISSION YOGURT, INC., a Colorado
20 corporation,

21 Defendants.

CASE NO. C11-04487 HRL

PLAINTIFF AREAS USA SJC, LLC'S
LIST OF WITNESSES TO BE CALLED
AT TRIAL

Complaint filed: September 9, 2011
Trial date: January 7, 2013

1 In accordance with the Court's Standing Order re: Pretrial Preparation, plaintiff Areas USA SJC,
 2 LLC submits this list of witnesses to indicate those witnesses Areas presently intends to call at trial, as
 3 well as those witnesses Areas may call depending upon the circumstances. As required by the Standing
 4 Order, this list provides a brief statement following each name describing the substance of the testimony
 5 anticipated to be given.. As allowed by the Standing Order, this list does not include witnesses intended
 6 solely for impeachment or rebuttal. Further, events and circumstances may change markedly, both after
 7 the Court rules on pre-trial motions and during the trial itself. For this reason, Areas ultimately may
 8 choose not to call certain of the witnesses it presently intends to call; likewise, changed circumstances
 9 may make it appropriate for Areas to seek to call additional witnesses not presently listed below,
 10 including witnesses to lay a foundation for admission of exhibits should Mission not stipulate to
 11 admission.

12 The list provided below is intended to represent those witnesses that Areas presently intends to
 13 call, or may call, during its case-in-chief. Some of these witnesses also may have facts to impeach
 14 Mission or its representatives. Because pure rebuttal witnesses need not be disclosed, Areas has not
 15 provided here the names of the insurance rebuttal witnesses previously designated., but notes that their
 16 names and substance of their testimony already have been made known to Mission.

17 WITNESSES AREAS INTENDS TO CALL

18 **1. Eduardo Uribe.** Mr. Uribe is the Vice President of Business Development for Areas
 19 USA, Inc Areas anticipates that Mr. Uribe would testify to the following topics: (i) introduce Areas to
 20 the jury through a brief description of its history and operations; (ii) the Prime Contract and Areas'
 21 business plan for developing concession spaces, either direct or through subcontracts; (iii) the reasons
 22 for provisions like section 22 of the Concession Subcontract with Mission (and a similar provision in the
 23 Prime Contract); (iv) evolution of Areas' development efforts at the Airport; (v) specific evolution of
 24 TA-21 space, including evolution of concepts within the space, its change of locations and the reasons
 25 therefore; (vi) Areas' understanding as to the effect of the space swap; (vii) development of Areas'
 26 relationship with the Mission Yogurt and Mission's performance on both of its subleases; (viii) damages
 27 to Areas from Mission's refusal and failures to honor its contractual obligations with respect to the TA-
 28

21 space; (ix) foot traffic at the San Jose Airport and how foot traffic factors into revenue projections; (x) Areas' efforts to help Mission obtain franchise agreements, as well as commitments by the Airport to provide Mission with cost assurances and absence of intent to deceive Mission; (x) the fact that Areas always has been able to insure all its spaces at the Airport, including the TA-21 space; (xii) Areas' experiences with some of the same types of issues Mission claims are impeding its progress, and the very different ways Areas has responded; (xii) Areas' relationship with the Legends Group and reasons why that relationship was discontinued.

2. Xavier Rabell Torello. Mr. Torello is CEO of Areas USA, Inc. Areas intends to call Mr. Torello to testify to some or all of the topics listed above for Mr. Uribe. Because witness order has not yet been determined, the best Areas can say for now is that, although there may be some modest overlap between the two witnesses (especially on the most central issues), Areas will make every effort to minimize duplication.

3. Huy Pham. Mr. Pham is the Director of Business Development for Areas USA, Inc. after describing his background and job duties, Mr. Pham will testify to his efforts to sublease the TA-21 space, culminating in the Concession Sonbcontract with Mission. Mr. Pham will describe how Mission had expressed an interest in expanding to California, how he extended the opportunity to Mission to operate concessions at two separate spaces, one in Terminal A and one in Terminal B, and how Mission ultimately came to take both spaces. Mr. Pham is expected to testify that he expressly steered Mr. Tafoya to the Legends Group for design/build-out expertise, and specifically directed the Legends Group in writing to provide Mission with the relevant information he needed to evaluate whether to take the TA-21 space and Legends assurances to him; in that regard, Areas' anticipates introducing through Mr. Pham documents confirming the foregoing, as well as a document from Rod Tafoya confirming his knowledge, prior to entering into the subcontract, of the existence of a baggage system underneath the TA-21 space. In short, Mr. Pham is expected to provided testimony to refute every element of Mission's "fraud in the inducement" defense to performance of this contract.

4. Irv Tosk and/or Patrick McCue. Mr. Tosk and Mr. McCue are Airport officials familiar with (i) the TA-21 space and issues as to its build-out, (ii) the baggage system and CTX

1 machines on the first floor of Terminal A, (iii) the TA-21 space swap and reasons therefore, (iv) the
 2 Airport's actual build-out requirements (i.e., that many of things Mission claims make build-out costly
 3 are not required), (v) the Airport's indemnity offers with respect to any genuine added build-out costs
 4 and the only impediment thereto (Mission's refusal to submit final build-out plans so that the Airport
 5 has assurance is not writing a blank check), (vi) the Airport's concerns with respect to Mission and its
 6 performance, and (vii) foot traffic at the airport. It is expected that they would provide testify on all of
 7 these topics.

8 Areas intends, if possible, to call only one of these two witnesses, so as to streamline trial and
 9 minimize inconvenience. That decision will be based on the scope of each witness's personal
 10 knowledge and witness availability at the time of trial.

11 **5. Tony Hidalgo.** Tony Hidalgo is the personal most knowledgeable for Hensel Phelps, the
 12 Airport's contractor. Mr. Hidalgo is expected to testify to airport requirements for build-out, the TA-21
 13 space swap and reasons therefore, the design discretion vested in Mission, and that the current space is
 14 developable.

15 **6. Shawn Smith.** Mr. Smith is a broker who worked with Fresh Choice and Togo's as
 16 possible franchises for the TA-21 space; he has past experience dealing with Mission and Rod Tafoya.
 17 Mr. Smith is expected to testify that things such as the baggage system, CTX machines, space swap and
 18 reasons therefore were common knowledge, and that no one instructed him to keep anything from
 19 Mission. He further is expected to testify to his dealings with Mission and its representatives with
 20 respect to the TA-21 space.

21 **7. Todd Peterson.** Mr. Peterson is a representative of Togo's. He is expected to testify
 22 similarly to Mr. Smith, and to Togo's dealings with Mission.

23 **8. Sandy Boyd.** Sandy Boyd is a representative of Fresh Choice, another brand earmarked
 24 for the TA-21 space. He is expected to testify to a face-to-face meeting, at which Mission's Rod Tafoya
 25 was present and the CTX machines about which Mission now complains were a topic of discussion.
 26 Mr. Boyd previously has been unable to fix the precise date of this meeting based on documents in his
 27 possession, but Areas believes, based on documents in its possession, that the meeting took place prior
 28

1 to Mission entering into the Concession Subcontract. If Mr. Boyd's recollection can be refreshed, Areas
 2 most likely would dispense with further witnesses to fix the date of that meeting; if not, other witnesses
 3 may be called.

4 **9. Derrick Chin.** Mr. Chin is Areas' newly hired Director of Construction. He was hired
 5 on September 13, 2012 (after the fact discovery cutoff in this case). Mr. Chin will testify to his
 6 responsibilities for overseeing construction and build-out of concession space on Areas' behalf, the
 7 types of problems he has encountered (and events that have arisen) since his hiring, and his dealings
 8 with such problems not just at San Jose, but at other airports -- not mention the very different way Areas
 9 has responded to issues than Mission has.

10 **WITNESSES AREAS MAY CALL**

11 **1. Mission's Rod Tafoya and Mark Schafer.** Both individuals are Colorado residents
 12 who cannot be compelled to appear; they also are party representatives whose depositions can be used
 13 even if they are present. Areas presently intends to simply present deposition testimony from these two
 14 witnesses in its case-in-chief, but may call them to testify live if circumstances so warrant. Should they
 15 be called to testify live, Areas anticipates that the witnesses would testify to the same subject matters
 16 designated from their deposition transcripts.

17 **2. Legends' Stanley Jackson and Justin Jackson.** Both individuals are Texas residents
 18 who cannot be compelled to appear; they also are party representatives (hired by Mission, represented
 19 by Mission counsel and, in the case of Stanley, a designated Mission expert) whose depositions can be
 20 used even if they are present. Areas presently intends to simply present deposition testimony from these
 21 two witnesses in its case-in-chief, but may call them to testify live if circumstances so warrant. Should
 22 they be called to testify live, Areas anticipates that the witnesses would testify to the same subject
 23 matters designated from their deposition transcripts.

24 **3. Ingrid Walatka.** In the relevant time frame, Ms. Walatka was Director of Product
 25 Development at Fresh Choice Restaurants, LLC. Areas may call Ms. Walatka to corroborate Mr.
 26 Boyd's testimony and/or to fill in gaps as to dates.

1 **4. Howard Nudell.** Mr. Nudell has been designated as a rebuttal expert, but he also has
2 percipient knowledge concerning the San Jose Airport and what types of requirements it imposes on
3 build-outs. Areas may elicit some testimony from Mr. Nudell in its case-in-chief.

4 **5. Charles Bluemle.** Mr. Bluemle has been serving as Airport General Manager for Areas.
5 Areas might call Mr. Bluemle to testify regarding Areas' interactions with Mission and The Legends
6 Group, and regarding what certain witnesses Mission may call told Mr. Bluemle about their interactions
7 with Mission and The Legends Group.

8
9 Dated: December 4, 2012

GREENBERG TRAURIG, LLP

10 By: /s/ Scott D. Bertzyk
11 Scott D. Bertzyk
12 Attorneys for Plaintiff,
13 AREAS USA SJ, LLC
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JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 4

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 AREAS USA SJC, LLC, a California limited
16 liability company,

17 Plaintiff,

18 v.

19 MISSION SAN JOSE AIRPORT, LLC, a
20 Colorado limited liability company, and
21 MISSION YOGURT, INC., a Colorado
22 corporation

23 Defendants.

CASE NO. CV11-04487 HRL

DEFENDANTS' WITNESS LIST

Trial Date: Jan 7, 2013

Courtroom: Hon. Howard R. Lloyd

Pursuant to the Court's Standing Order re: Pretrial Preparation and Rule 26(a)(3), Defendants Mission San Jose Airport, LLC and Mission Yogurt, Inc. (collectively, "Mission") set forth the name of each witness they expect to call at trial other than solely for impeachment or rebuttal, along with a brief statement describing the substance of the testimony to be given.

I. Roderick Tafoya

A. Percipient Lay Witness Testimony

Mr. Tafoya, Mission's President, will testify that he was assured by Areas' Huy Pham that there were no unusual construction issues with the TA-21 space, that construction costs would be consistent with costs incurred at other spaces in San Jose, including San Jose Joes, and that so long as long as Mission met the contractual minimum cost per square foot, Mission would be fine. Tafoya will further testify that he was never told of the presence of the baggage handling system or CTX machines beneath TA-21, the requirements and restrictions imposed by the airport or the increased costs expected as a result, prior to signing the Concession Subcontract. Tafoya will also testify that although he was told that the TA-21 space had been swapped with the space next door, he was told that it was at the airport's request and to address cuing issues and to get Hudson News out of its current space. He was never told that the spaces were swapped in an effort to address issues beneath the space.

Tafoya will testify that he relied on Areas' representations and would not have entered into the Concession Subcontract had he been told the truth, or the above facts not been concealed. Tafoya will further testify that he has worked with the Legends Group to attempt to determine the amount of increased costs expected to build out the space as a result of the baggage handling system and CTX machines and understands that it will be anywhere from several hundred thousand dollars to as much as \$800,000 or more.

Finally, Tafoya will testify to his efforts to obtain liability insurance coverage for the TA-21 space sufficient to cover the potential exposure resulting from damage to the CTX machines and baggage conveyor equipment.

B. Percipient Expert Witness Testimony

Tafoya has also been designated as a percipient expert witness on the issue of lost profits and will testify that Mission has suffered lost profits from not being able to build out the TA-21 space as expected. Tafoya will testify to the profits that Mission reasonably expects to have made from operating three concession brands in TA-21 based on the profits Mission has made over approximately the same period at San Jose Joes and based on his experience in operating foodservice concessions at other airports.

II. Justin Jackson

Justin will testify that he is employed by the Legends Group and, in that capacity, served as the on-site Project Manager for Areas at the San Jose Airport for part of 2009, 2010 and part of 2011. He will testify that Areas was informed of the serious issues beneath TA-21 in 2009 and again in early 2010, and the increased costs associated therewith and that Areas complained to the airport and ultimately requested that TA-21 be swapped with the space next door in an effort to address the issues.

Justin will further testify that on or about June 2, 2010, as Tafoya was traveling to San Jose to inspect TA-21 (after TA-21 was partially reconfigured), Areas' Huy Pham pulled him aside and instructed him not to escort Tafoya beneath the space (where the CTX machines were), that Areas' CEO, Xavier Rabell, told Pham that Pham's job was on the line if he didn't get Mission to take the space, and that Mission was Areas' last hope. Justin then called his father, Stanley Jackson, President of Legends, and told him that Pham was asking him not to disclose the problems to Mission or allow Mission underneath the space.

Jackson will also testify that he never disclosed or discussed the problems beneath TA-21 with Mission prior to August 2010 and did not provide any budget or cost estimates to Mission prior to Legends being retained by Mission in September 2010 and told Pham that could not do so in June 2010 because of all of the issues beneath the space.

III. Stanley Jackson

A. Percipient Lay Witness Testimony

1 Stanley Jackson, President of Legends, will testify that Legends was retained as a Project
2 Manager for various Areas construction projects during 2009, 2010 and 2011, including the San Jose
3 Airport. He will testify that in mid-2009, as Areas was investigating the build out of TA-21 as a
4 Tony Roma's, he accompanied Areas executive Mark Taitt beneath the space and that it was
5 immediately apparent that there were problems.

6 He will further testify that as Areas' Project Manager at San Jose, Legends and Areas were
7 informed in January 2010 that any food and beverage concession in TA-21 would have to comply
8 with various restrictions and requirements in order to protect the baggage handling system and CTX
9 machines beneath the space, and that Stanley informed Areas' Pham that he would have to disclose
10 these issues to any DBE interested in a subconcession contract for the TA-21 space. He will testify
11 that Legends informed Areas that TA-21 was not a good venue for a food and beverage concession
12 and about the substantial costs associated with the issues beneath the space.

13 Stanley will also testify that on or about June 2, 2010 he received a call from Justin
14 informing him that Pham instructed Justin not to allow Tafoya beneath the space, that Rabell had
15 told Pham that his job was on the line and that Mission was Areas' last hope of finding someone to
16 take the TA-21 space. Stanley will testify that he told Justin that Legends worked for Areas and that
17 if that is what they said to do, he needed to do what Areas said. He will testify that he phoned Pham
18 to ask him "Huy., what are we doing here?" and that Pham told him that Areas needed Legends to
19 help get TA-21 sold, that Pham's job was on the line and that Legends was not to disclose the issues
20 beneath the space until the ink was dry on a deal. Stanley will testify that he did not discuss with
21 Mission or disclose to it the issues beneath the space, or provide any budgets or costs estimates to
22 Mission, prior to September 2010 when Legends was retained by Mission.

23 B. Percipient Expert Testimony

24 Stanley has also been designated as a percipient expert witness to testify concerning
25 Legends' efforts on behalf of Mission to develop a plan and costs estimates to build a foodservice
26 concession in TA-21 and the extra costs associated with constructing a foodservice concession in
27 TA-21 in light of the baggage handling system and CTX machines beneath the space.
28

IV. Daniel Ludwig**A. Percipient Lay/Expert Testimony**

Daniel Ludwig, Legends' Chief Estimator, was primarily responsible for estimating the cost of developing a foodservice concession in such a manner as not to interfere with the baggage handling system and CTX machines beneath the space and in compliance with the airport's requirements and restrictions and will testify to his efforts in that regard.

V. Mark Taitt

Mark Taitt, Vice President of Operations and head of Design/Build for Areas, will testify that he was responsible for managing Areas' efforts to build out concessions at San Jose Airport, including the Tony Roma's in TA-21. In connection with the effort to build out TA-21 as a Tony Roma's in mid-2009, Taitt was escorted beneath the space by the Legends Group and it was immediately apparent that any build out of a foodservice concession in TA-21 would be extremely challenging and expensive. He will further testify that others at Areas were aware of the equipment under TA-21 and associated difficulty and expense, including Huy Pham and Eduardo Uribe, and that the difficulty and expense was a primary reason for Areas' decision not to build out TA-21 itself and to instead try to find a Disadvantaged Business Entity to build out the space.

VI. Michael Crennen

Michael Crennen, of Crennen & Co. Insurance will testify that he attempted to obtain liability insurance coverage for TA-21 to cover potential damage to the baggage handling system and CTX machines beneath the space. Mr. Crennen will testify that he was unable to obtain coverage from the carriers with which his firm has relationships. Crennen will also testify to the difficulty and expense of attempting to obtain an umbrella insurance policy sufficient to cover potential damage to the CTX machines from a specialty carrier.

VII. Jeff Reddy

Mr. Reddy will testify (by deposition testimony) that it is not common to have to work around CTX machines in airports and that of all of the projects on which he has worked with Mission none involved baggage systems or CTX machines. He will also testify that it is uncommon to have to waterproof an entire concessions area and that waterproofing presents an additional expense. He will testify that you cannot guarantee that waterproofing will prevent water leakage into the area below a concession space and that he is aware of at least two instances at Denver International Airport in which water leaks have been experienced.

VIII. Phil Zlatunich

Zlatunich, Estimator and Project Manager for Critchfield Mechanical, Inc., will testify to his experience concerning plumbing and construction matters at the San Jose Airport and his efforts to estimate the costs of running plumbing under TA-21 in compliance with airport requirements.

By: /s/ Daniel T. Rockey
Daniel T. Rockey

JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 5

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10

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 AREAS USA SJC, LLC, a California
15 limited liability company,

16 Plaintiff,

17 vs.

18 MISSION SAN JOSE AIRPORT, LLC, a
19 Colorado limited liability corporation; and
MISSION YOGURT, INC., a Colorado
20 corporation,

21 Defendants.
22

CASE NO. C11-04487 HRL

PLAINTIFF AREAS USA SJC, LLC'S
TRIAL EXHIBIT LIST

Complaint filed: September 9, 2011
Trial date: January 7, 2013

1 In accordance with the Court's Standing Order re: Pretrial Preparation, plaintiff Areas USA SJC,
2 LLC ("Areas") submits this list of exhibits that it presently believes it may offer into evidence at trial.
3 As allowed, this list does not include exhibits intended solely for impeachment or rebuttal. Further,
4 events and circumstances may change markedly, both after the Court rules on pre-trial motions and
5 during the trial itself. For this reason, Areas ultimately may choose not to seek admission of each of the
6 exhibits listed below; likewise, changed circumstances may make it appropriate for Areas to seek the
7 introduction of additional exhibits not presently listed below.

8 The list provided below is intended to represent those exhibits that Areas believes it is most
9 likely Areas might seek to introduce during the course of this trial, exclusive of exhibits intended solely
10 for impeachment or rebuttal.

11 For the purposes of this list, the initials indicating the sponsoring witnesses relate to the
12 following anticipated witnesses:

13 RT: Rod Tafoya

14 MS: Mark Schafer

15 SJ: Stanley Jackson

16 JJ: Justin Jackson

17 HP: Huy Pham

18 EU: Eduardo Uribe

19 PM: Patrick McCue

20 IT: Irv Tosk

21 GAH: Guillermo Anthony Hidalgo

22 XRT: Xavier Rabell Torello

23 KH: Kathleen Henning

24 LL: Lynne Lupkus

25 JHN: J. Howard Nudell

26 JSR: Jeffry Reddy

27 TP: Todd Peterson

IW: Ingrid Walatka

SB: Sandy Boyd

SS: Shawn Smith

Exhibit	Description	Purpose / Substance	Sponsor
3	6/15/10 email from Tosk requesting TA-21 CAD files sent to Reddy	Drawings made available to Mission's architect pre-contract	JSR/GAH
4	2-pg overlay drawings of TA-21 (MSJC774-775)	Layout of premises	ADMITTED
5	Leaseline drawing superimposed over conveyor belts (HP26)	Layout of premises	ADMITTED
6	Leaseline drawing w/ proposed concession layout (HP27)	Layout of premises	ADMITTED
7	3/5/10 email from Tosk to Justin et al. w/ TA-20 & TA-21 leaseline drawings attached (RRA37-44)	Post-space-swap drawings of TA-21 provided to Legends, pre-contract	ADMITTED
8	6/30/10 email from Reddy to Tafoya w/ 3 conceptual plans (MSJC742-745)	Mission and architect exchanging design plans, pre-contract	JSR/RT
9	7/13/10 email from Schafer to Reddy w/ floor plans (RRA17-19)	Mission designing space w/ architect, pre-contract and post-site visits	JSR/MS
10	7/14/10 email from Tafoya to Pham ("depends on the bag system") (AUSA786)	Mission knew of baggage system pre-contract	HP/RT
11	7/16/10 email from Reddy to Tafoya and Pham w/ updated plan (RRA13-15)	Mission's architect revised plan after Tafoya's comment re baggage system	JSR/RT/HP
12	7/20/10 email from Reddy to Tafoya and Pham w/ revised plan (RRA11-12)	Mission's architect revised plan after Tafoya's comment re baggage system	JSR/HP
13	9/17/10 email Huy/Stanley re Rod's	Tafoya's planned breach (minimum capital	SJ/HP/DL

	\$800k budget (LG48-49)	expenditure was 50% more)	
14	Mission Yogurt, Inc. -- "Mission of Excellence" promo materials (AUSA1157-1165)	Mission's sophistication	RT/MS
16	Proposed concession areas drawing (MSJC--	Mission had drawings	RT
17	7/16/10 & 7/19/10 emails from Reddy to Pham and Tafoya w/ updated plan (AUSA1875-1883)	Mission had drawings	JSR/HP/RT
18	12/19/11 email from Tafoya to Schafer fwding Reddy updated plan (MSJC669-671)	Mission had drawings	RT/MS
19	4/16/10 email from Levine to Tafoya re meeting Mark & Rod at SJC (DL9)	Mission visited SJC pre-contract	RT
21	12/26/11 email from Tafoya to Schafer fwding pre-K discussions (MSJC615-616)	San Jose Joe's and TA-21 package deal	RT/HP
22	4/29/10 email from Pham to Airport re Mission has committed to take space (AUSA1664)	San Jose Joe's and TA-21 package deal	HP/PM/IT
23	10/14/10 email from Original Joe's to Schafer et al. re issues with Mark & Rod's management (DL12)	Mission is uncooperative	HP/MS
24	Legends' "Total Budget" of \$1,833,000 for TA-21 (LG56)	Mission's sole, unfounded budget document	RT
25	Legends' "CTX Work Scope Budget" of \$840,821	Mission requesting costs info from Legends	RT
26	Mission's Second Amended Answer and Counterclaims	Will be used both for admissions and impeachment	JUDICIAL NOTICE
29	Duplicate of Exhibit 7 (w/ Bates MSJC136-143)	Post-space-swap drawings of TA-21 provided to Legends, pre-contract	ADMITTED
30	Mission / D-Lew Assignment Agreement for San Jose Joe's (MSJC470-476)	Mission contracted for San Jose Joe's space	ADMITTED
31	Mission / D-Lew Assignment of Concession Subcontract	Mission contracted for	ADMITTED

	(MSJC477-483)	San Jose Joe's space	
32	Mission / D-Lew Assignment of License Agreement (MSJC484-491)	Mission contracted for San Jose Joe's space	ADMITTED
33	12/26/11 email from Tafoya to Schafer fwding Pham email re Mission footdragging (MSJC622)	Mission is uncooperative	HP
35	Areas / Mission Concession Subcontract (signed) (MSJC369-390)	Existence of contract; terms	ADMITTED
36	Areas / Mission Guaranty (signed) (MSJC395-402)	Existence of contract; terms	ADMITTED
37	7/15/10 email from Tafoya to Pham and counsel re negotiating contract language (AUSA135-136)	Mission negotiated K terms	HP/RT/EU
38	8/6/10 email re fully executed Concession Subcontract (AUSA1405-1427)	Date K was executed	HP/RT/EU
39	8/6/10 email from Tafoya asking for alcohol clause (AUSA1598)	Proof of Tafoya's skittishness and unwillingness to proceed for other reasons	HP/RT/EU
40	8/18/10 email from Tafoya to counsel and Areas confirming 6/30/10 effective date for K (AUSA936)	Effective date of K	HP/RT/EU
41	8/16/10 email from Tafoya to Pham re airport approval of concepts, franchise agreements (AUSA1897-1898)	Mission's foot-dragging	RT/HP
42	9/7/10 email from Tafoya to Pham, Legends re getting info from Tafoya (AUSA770-772)	Mission's foot-dragging	HP/RT/JJ/SJ
43	9/9/10 email from Togo's communicating concept info to Tafoya (TG109-111)	Mission purporting to move forward, but with various excuses	TP/RT
44	9/13/10 email from Stanley to Legends/architects re "problems," planning SJ visit to view space underneath (MSJC713-717)	Mission continued to make plans without complaint	SJ/JJ/DL
46	9/15/10 email from Albi to Stanley, Tafoya, et al. showing space superimposed over baggage	Mission has drawings and continues to make	SJ/RT

	system (SJC71-73)	plans to build out	
49	12/6/10 email from Areas A/R to Tafoya re returned check, \$90,000 due (AUSA49-50)	Mission in breach	RT
51	12/21/10 email from Tafoya to Shawn Smith re not executing franchise agreements (TG737)	Mission making excuses	RT/SS
52	1/5/11 email from Uribe to Areas re Tafoya outstanding fees (AUSA897-899)	Mission in breach	HP/XRT/EU
53	2/1/11 email from Stanley to Tafoya re work stopping, Tafoya nonresponsive (LG61)	Mission in breach	SJ/RT
54	2/8/11 email from Stanley to Pham re "Rod is Rod" (AUSA912-913)	Mission making excuses	HP/SJ
55	2/2/12 email from McCue to Uribe re SJC will subsidize extra build-out cost (SJC58)	No damage to Mission/ excuse	EU/PM
58	4/8/11 email from Tafoya to Justin, Pham re not building out TA-21 (AUSA774)	Mission making excuses	RT/JJ/HP
59	5/4/11 email from Tafoya to Areas re "still negotiating whether Togo's should be built" (AUSA931)	Mission making excuses	RT/HP
60	6/6/11 email from Tafoya to Areas scheduling call to resolve SJC issues (AUSA1643)	Mission in breach; Areas attempting to resolve	RT/HP
61	6/20/11 demand letter to Mission (MSJC20-22)	Mission in breach	RT
62	7/11/11 email from Stanley to Tafoya, Justin re new build-out estimate (MSJC13-15)	Mission still not claiming fraud	SJ/JJ/RT
63	7/19/11 Mission response to Areas' demand letter (MSJC9-12)	Mission in breach	RT
64	2/10/12 email from McCue to Tafoya re costs associated w/ CTX (SJC56)	Efforts to resolve	PM/RT
69	2/1/10 Areas/SJC conference call notes (Flip-flop of Tony Roma's space to resolve CTX issues) (AUSA1653-1655)	CTX issues resolved by swap	IT/PM/XRT/HP

70	2/25/10 email from Tosk ("TA-21 Space Swap") w/ lease outline drawing (AUSA1656-1657)	Space swap finalized pre-Mission	IT/PM/GAH
76	10/12/10 Hensel Phelps internal email w/ TA-20, TA-21 drawings (HPCC28-32)	Drawing available	GAH
79	8/21/09 email from Pham to Airport re subleasing Tony Roma's (AUSA1622)	Areas planning to sublease TA-21	PM/IT/HP/EU/XRT
85	2/9/10 email from Pham to Yoo, S. Smith re swapping spaces TA-20 / TA-21 due to CTX (JDDA18-24)	Reason for space swap	HP/SS
86	2/13/10 email among JDDA, Togo's, Fresh Choice planning 2/22/10 meeting at SJC site (TG226)	Determining dates of site visits	SS/TP/SB/HP
87	2/18/10 email from Shawn Smith to various confirming 2/22/10 mtg at SJC with all partners (TG224)	Determining dates of site visits	IW/SS/TP/SB/HP
89	Email w/ minutes from 2/18/10 Areas/SJC mtg ("great site visit at the Tony Roma's space" w/ all 3 brands) (1776-1779)	Determining dates of site visits	IT/PM/HP/XRT
90	4/21/10 email from Tafoya to Pham re proforma, revised construction cost (AUSA2011-2012)	Areas freely provided info to Mission	HP/RT
94	5/8/10 email from Levine to Pham re Tafoya's nonresponsiveness (DL83-86)	Mission's foot-dragging	HP
96	5/21/10 email from Mission's counsel to Pham re Prime Contract, drawing of TA-21 in Ex. B (MSJC133)	Areas confirmed the exact space Mission was getting, pre-contract	RT/HP
99	6/2/10 email among Legends, Areas, Mission planning 6/2/10 meeting at Admirals club (MSJC632-633)	Determining dates of site visits	HP/RT/JJ/TP/IW
100	6/3/10 Areas/SJC meeting notes [Justin in attendance] (SJC122-123)	Areas facilitated free info flow among Mission, Legends, Airport	HP/IT/JJ/PM/RT/MS
101	6/2/10 email among Mission, Areas, counsel re revised concession subcontract	Mission negotiated K terms	HP/RT

	(AUSA846-863)		
102	6/7/10 email among Mission, Areas, counsel re various K terms (AUSA1835-1839)	Mission negotiated K terms	HP/RT
103	Meeting notes from 6/10/10 Areas/SJC meeting discussing progress w/ Mission deal (SJC124-125)	Areas made Legends the middleman for handling TA-21 build-out	HP
104	7/14/10 Outlook appointment for call w/ Mission, Areas, counsel (MSJC668)	Areas and Mission had meeting on day Tafoya told architect plans depend on baggage system	HP/RT
107	7/27/10 email from Tafoya to Justin and Pham re site visit, badging (AUSA937-938)	Mission, Legends, Areas freely discussing badging, pre-contract	HP/JJ/RT
108	8/5/10 email from Tafoya to Pham re Mission signed K, alcohol (AUSA1884-1886)	Date K was executed	RT/HP
110	8/18/10 email from Pham to Tafoya w/ executed agreement, back-dated to 6/30/10 (MSJC28)	Effective date of K	RT/HP/EU
112	9/7/11 email from Flaherty to La Baguette re TA-21 sublease (AUSA1614-1615)	Mitigation of damages	HP/XRT
119	1/25/11 email from Legends to Areas re moving forward with TA-21 (AUSA700-701)	Mission still not claiming fraud	JJ/SJ/EU
120	7/23/10 email from Areas to Mission & counsel w/ revised Concession Subcontract (AUSA1328-1353)	Mission negotiated K terms	RT/HP/EU
127	Areas document subpoena to The Legends Group	Mission withholding documents	SJ
128	6/9/10 email between Justin and Pham confirming Legends communicated build-out info to Mission	No concealment	JJ/HP/EU
133	2/9/10 email from Tosk to Legends, Areas, SJC re potential space swap w/ drawing or proposed swap. Justin taking pictures of CTX machines that day. (AUSA2093-2094)	Space swap known to Legends	IT/PM/JJ/HP/ GAH

135	8/27/12 email from McCue explaining space swap amendment, w/ 2/18/10 Areas letter to SJC re location swap	Space swap finalized pre-Mission	EU/PM
137	1/17/11 sketch layout of Togo's / Fresh Choice / Sip Savvy	Mission still not claiming fraud	RT
138	3/5/10 email from Tosk to Justin et al. w/ TA-20 & TA-21 lease line drawings attached (AUSA2055-2064)	No concealment	IT/JJ/PM/GAH
139	Notes from 6/3/10 Areas meeting (w/ Justin, Tafoya, Schafer) re Togo's and Fresh Choice in TA-21 (SJC122-123)	No concealment	RT/HP/JJ
144	J. Howard Nudell CV; 11/11/12 from Areas' counsel to Nudell confirming no publications by Nudell	Expert qualifications	JHN
145	J. Howard Nudell list of state certifications and registrations	Expert qualifications	JHN
146	Diagram of portion of Terminal A	Layout of premises	JHN
149	September 2007 SJC "Concession Tenants Improvements Design Criteria"	SJC construction requirements	JHN/PM/IT/SJ
150	Nudell Architects plan for Sora in Terminal A of SJC	Application of SJC construction requirements; possible to build-out over baggage system	JHN/PM/IT/SJ
151	TA-21 composite plan showing CTX on Level 1 below	Layout of premises	JHN/PM/IT/SJ
152	Floor sink penetration diagram	Construction requirements	JHN/PM/IT/SJ
154	J. Howard Nudell expert rebuttal report letter	Expert report	JHN
157	1/29/09 "Food and Beverage Concession Agreement" (Prime Contract) between Areas and SJC Airport	Terms of prime contract	ADMITTED
158	Duplicate of Exhibit 7 (except w/ Bates numbers AUSA1590-1597)	Areas produced document with space swap drawings early on	ADMITTED

159	5/4/09 email from Stanley Jackson to Areas, architects re Tony Roma's (LG 71-72)	Areas was not building out Tony Roma's itself	SJ
160	Declaration of Sandy Boyd	Mission knew of baggage system and issues prior to contract	SB
161	5/2/12 Declaration of Legends custodian, signed by Stanley Jackson	Mission/Legends withheld documents	SJ
162	10/13/10 letter from Airport to Legends re capital expenditures on concessions (AUSA2048-2053)	Typical build-out expenditures at SJC	PM/JJ/IT
163	10/5/11 letter from Areas' counsel to Mission Yogurt (guarantor) re default on San Jose Joe's contract	Mission does not honor contractual obligations	RT
164	10/5/11 letter from Areas' counsel to Mission San Jose Airport re default on San Jose Joe's contract	Mission does not honor contractual obligations	RT
165	2/23/12 letter from Areas' counsel to Mission Yogurt (guarantor) re default on San Jose Joe's contract	Mission does not honor contractual obligations	RT
166	2/23/12 letter from Areas' counsel to Mission San Jose Airport re default on San Jose Joe's contract	Mission does not honor contractual obligations	RT
167	11/9/12 letter from Areas to Mission re proof of insurance on San Jose Joe's	Mission does not honor contractual obligations	RT
168	11/16/12 letter from Mission to Areas re proof of insurance on San Jose Joe's	Mission does not honor contractual obligations	RT
169	11/20/12 letter from Areas to Mission re deficient proof of insurance on San Jose Joe's	Mission does not honor contractual obligations	RT
170	11/26/12 letter from Mission to Areas re deficient proof of insurance on San Jose Joe's	Mission does not honor contractual obligations	RT
171	1/14/10 Concession Subcontract between Areas and D-Lew Enterprises (AUSA491-507)	Terms of contract for San Jose Joe's	ADMITTED
172	9/13/10 email from architects to Legends, Airport, et al. confirming "no conflicts between the baggage	No hidden or unusual build-out issues	GAH/JJ/IT/DL

	system" and the space		
173	SJC "Tenant Mix and Concession Plan" (AUSA2013-2015)	TA-21 designated for sublease	IT/PM
174	6/1/10 email from Pham to Tafoya and Mission's counsel re space swap (MSJC634-637)	Areas told Mission pre-contract about space swap	HP/RT/EU
175	6/20/11 demand letter from Areas' counsel to Mission Yogurt, Inc.	Mission in breach	RT
176	SJC enplanements 2009-2010 (AUSA 2101)	Motive for Mission's breach	IT/PM
177	SJC enplanements 2010-2011	Motive for Mission's breach	IT/PM
178	11/29/12 letter from Airport to Areas w/ 2009-2011 SJC enplanement data	Motive for Mission's breach	PM/EU
179	Areas' certificate of commercial property insurance on premises	Premises are insurable	EU/XRT/KH/LL
180	Areas' certificate of liability insurance (w/ workers compensation)	Premises are insurable	EU/XRT/KH/LL
181	Areas' certificate of liability insurance (w/ liquor liability)	Premises are insurable	EU/XRT/KH/LL

Dated: December 4, 2012

GREENBERG TRAURIG, LLP

By: /s/ Denise M. Mayo
 Denise M. Mayo
 Attorneys for Plaintiff,
 AREAS USA SJC, LLC

JOINT PRETRIAL STATEMENT AND REPORT

EXHIBIT 6

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MISSION SAN JOSE AIRPORT, LLC and MISSION YOGURT, INC.

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 AREAS USA SJC, LLC, a California limited
12 liability company,

13 Plaintiff,

14 v.

15 MISSION SAN JOSE AIRPORT, LLC, a
16 Colorado limited liability company, and
MISSION YOGURT, INC., a Colorado
17 corporation,

18 Defendants.

CASE NO. CV11-04487 HRL

**MISSION SAN JOSE AIRPORT, LLC AND
MISSION YOGURT, INC.'S TRIAL
EXHIBIT LIST**

Complaint Filed: September 9, 2011

Trial Date: January 7, 2013

1 Mission has reviewed the Exhibit list of Plaintiff Areas USA SJC, LLS (“Areas”) and
2 incorporates by reference as if fully restated herein each of the exhibits set forth in that list, and
3 reserves the right to use and seek admission of each such document. Mission lists below such
4 additional exhibits as it may use at the trial of this matter.
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Ex. No.	Description	Purpose For Which Offered	Sponsor
250.	Email chain from S. Jackson to B. Smith, C. Mills, et al. dated 5/15/2009, Bates nos. LG000062-64	Notice/Intent	S. Jackson
251.	Email thread from S. Jackson to C. Chapman, A. Cottrell, and R. Barry dated 5/11/2009, Bates no. LG000065	Notice./Intent	S. Jackson
252.	Email from S. Jackson to C. Chapman dated 5/10/2009, Bates no. LG000066	Notice/Intent	S. Jackson
253.	Email thread from S. Jackson to C. Chapman, M. Tait, J. Jewett, et al., dated 5/8/2009, Bates nos. LG000067-68	Notice/Intent	S. Jackson
254.	Email thread from S. Jackson to C. Chapman, M. Taitt, R. Barry, J. Jewett, et al., dated 5/5/2009, Bates nos. LG000069-70	Notice/Intent	S. Jackson
255.	Email thread from S. Jackson to M. Taitt, and C. Chapman dated 5/4/2009, Bates nos. LG000071-72	Notice/Intent	S. Jackson
256.	Terminal A and Terminal B floor plans, Bates nos. LG000073-74	Notice/Intent	S. Jackson
257.	Legends Group LLC Invoice dated 3/9/2011, Bates nos. LG000075-76	Damages	S. Jackson Roderick Tafoya
258.	Legends Group LLC Invoice dated 6/5/2011, Bates nos. LG000077-92	Damages	S. Jackson Roderick Tafoya
259.	Accountants Compilation Report from Abacus Accounting Center dated 11/2/2012, Bates nos. MSJC000776-780	Damages	Roderick Tafoya
260.	Draft Accountants Compilation Report from Abacus Accounting Center dated 7/10/2012, Bates nos. MSJC0007881-785	Damages	Roderick Tafoya

Ex. No.	Description	Purpose For Which Offered	Sponsor
261.	Email chain from B. Albinson to B. Beattie, J. Loui, et al., dated 9/13/2010, Bates nos. FA000001-3	Damages/Materiality	Custodian
262.	Email chain from B. Albinson to G. Hidalgo and J. Loui, et al., dated 9/13/2010, Bates nos. FA000004-6	Damages/Materiality	Custodian
263.	Email chain from B. Albinson to J. Loui dated 9/14/2010, Bates nos. FA000007-11	Damages/Materiality	Custodian
264.	Email chain from B. Albinson to J. Loui dated 9/14/2010, Bates nos. FA000012-16	Damages/Materiality	Custodian
265.	Email chain from B. Albinson to J. Loui dated 9/14/2010, Bates nos. FA000017-24	Damages/Materiality	Custodian
266.	Email chain from B. Albinson to J. Loui dated 9/14/2010, Bates nos. FA000025-30	Damages/Materiality	Custodian
267.	Email chain from B. Albinson to J. Loui, et al., dated 9/13/2010, Bates nos. FA000031-32	Damages/Materiality	Custodian
268.	Email chain from B. Albinson to L. Moyaert, R. Franssen, et al., dated 9/1/2010, Bates nos. FA000033-34	Damages/Materiality	Custodian
269.	Email chain from B. Beattie to B. Albinson, G. Hidalgo, J. Loui, et al., dated 9/13/2010, Bates nos. FA000035-37	Damages/Materiality	Custodian
270.	Email chain from R. Franssen to J. Loui dated 8/30/2010, Bates no. FA000038	Damages/Materiality	Custodian
271.	Email chain from R. Franssen to L. Moyaert, et al., dated 8/30/2010, Bates no. FA000039	Damages/Materiality	Custodian
272.	Email chain from G. Hidalgo to B. Albinson, J. Loui, et al., dated 9/13/2010, Bates nos. FA000040-42	Damages/Materiality	Custodian

Ex. No.	Description	Purpose For Which Offered	Sponsor
273.	Email chain from J. Jackson to K. Schmid, L. Moyaert, B. Albinson, R. Franssen, et al., dated 9/1/2010, Bates nos. FA000043-46	Damages/Materiality	Custodian
274.	Email chain from M. Lofano to J. Loui and K. Schmid dated 8/31/2010, Bates nos. FA000047-48	Damages/Materiality	Custodian
275.	Email chain from M. Lofano to J. Loui dated 9/10/2010, Bates nos. FA000049-53	Damages/Materiality	Custodian
276.	Email chain from M. Lofano to J. Loui dated 9/10/2010, Bates nos. FA000054-57	Damages/Materiality	Custodian
277.	Email chain from J. Loui to B. Albinson, M. Rotham, B. Beattie, G. Hidalgo, et al., dated 9/14/2010, Bates nos. FA000058-63	Damages/Materiality	Custodian
278.	Email chain from B. Albinson to M. Rotham, B. Beattie, G. Hidalgo, J. Loui, et al., dated 9/14/2010, Bates nos. FA000064-67	Damages/Materiality	Custodian
279.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000068-79	Damages/Materiality	Custodian
280.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000080-89	Damages/Materiality	Custodian
281.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000090-102	Damages/Materiality	Custodian
282.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000103-112	Damages/Materiality	Custodian
283.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000113-118	Damages/Materiality	Custodian

Ex. No.	Description	Purpose For Which Offered	Sponsor
284.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000119-135	Damages/Materiality	Custodian
285.	Email chain from J. Loui to B. Albinson, et al., dated 9/10/2010, Bates nos. FA000136-139	Damages/Materiality	Custodian
286.	Email chain from B. Albinson to A. Khattab, et al., dated 6/15/2012, Bates nos. LG000093-98	Damages/Materiality	S. Jackson/D. Ludwig
287.	Drawing entitled "Terminal A Floor 2 Version 9," Bates no. LG000099	Damages/Materiality	S. Jackson/D. Ludwig
288.	Drawing entitled "Preliminary Floor Plan" dated 11/22/2010, Bates no. LG000100	Damages/Materiality	S. Jackson/D. Ludwig
289.	Drawing entitled "Floor Plan," Bates no. LG000101	Damages/Materiality	S. Jackson/D. Ludwig
290.	Drawing entitled "Ceiling Plan," Bates no. LG000102	Damages/Materiality	S. Jackson/D. Ludwig
291.	Drawing entitled "Elevations," Bates no. LG000103	Damages/Materiality	S. Jackson/D. Ludwig
292.	New SJC Concept Study, Bates nos. LG000104-117	Damages/Materiality	S. Jackson/D. Ludwig
293.	Letter to J. Jackson from I. Tosk dated 1/5/2011, Bates nos. LG000118-119	Damages/Materiality	S. Jackson/D. Ludwig
294.	Concept Review Application Form, Bates nos. LG000120-121	Damages/Materiality	S. Jackson/D. Ludwig
295.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000122	Damages/Materiality	S. Jackson/D. Ludwig
296.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000123	Damages/Materiality	S. Jackson/D. Ludwig
297.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000124	Damages/Materiality	S. Jackson/D. Ludwig

Ex. No.	Description	Purpose For Which Offered	Sponsor
298.	Architectural drawing regarding Schedule of Equipment, Bates no. LG000125	Damages/Materiality	S. Jackson/D. Ludwig
299.	Architectural drawing regarding Schedule of Equipment, Bates no. LG000126	Damages/Materiality	S. Jackson/D. Ludwig
300.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000127	Damages/Materiality	S. Jackson/D. Ludwig
301.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000128	Damages/Materiality	S. Jackson/D. Ludwig
302.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000129	Damages/Materiality	S. Jackson/D. Ludwig
303.	Architectural drawing regarding Elevations, Bates no. LG000130	Damages/Materiality	S. Jackson/D. Ludwig
304.	Architectural drawing regarding Elevations, Bates no. LG000131	Damages/Materiality	S. Jackson/D. Ludwig
305.	Picture of Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000132	Damages/Materiality	S. Jackson/D. Ludwig
306.	Drawing of cash registers, Bates no. LG000133	Damages/Materiality	S. Jackson/D. Ludwig
307.	Photo of Togo's, Bates no. LG000134	Damages/Materiality	S. Jackson/D. Ludwig
308.	Aerial drawing of space, Bates no. LG000135	Damages/Materiality	S. Jackson/D. Ludwig
309.	Annotated drawing regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000136	Damages/Materiality	S. Jackson/D. Ludwig
310.	Annotated drawing regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000137	Damages/Materiality	S. Jackson/D. Ludwig
311.	Photo of materials, chair, and lamp, Bates no. LG000138	Damages/Materiality	S. Jackson/D. Ludwig

Ex. No.	Description	Purpose For Which Offered	Sponsor
312.	Drawings regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000139-149	Damages/Materiality	S. Jackson/D. Ludwig
313.	Drawings regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000150-160	Damages/Materiality	S. Jackson/D. Ludwig
314.	New SJC Concept Study drawing, Bates no. LG000161	Damages/Materiality	S. Jackson/D. Ludwig
315.	New SJC Concept Study drawing, Bates no. LG000162	Damages/Materiality	S. Jackson/D. Ludwig
316.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000163	Damages/Materiality	S. Jackson/D. Ludwig
317.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000164	Damages/Materiality	S. Jackson/Ludwig
318.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000165	Damages/Materiality	S. Jackson/Ludwig
319.	Letter from K. Reynolds to W. Sherry dated 2/18/2010, Bates no. AUSA002054	Notice/Intent	TBD
320.	Email from P. McCue to E. Uribe dated 8/27/2012, Bates nos. AUSA002068	Notice/Intent	Uribe
321.	First Amendment to Retail Concession Agreement Between The City of San Jose and AMS-SJC JV, Bates nos. AUSA002069-2092	Notice/Intent	Uribe
322.	Email from X. Torello to F. Balli dated 5/27/2009, Bates nos. AUSA002200-2201	Notice/Intent	X. Torello
323.	Email from M. Taitt to E. Uribe and X. Torello dated 6/18/2009, Bates no. AUSA0002202	Notice/Intent	Uribe
324.	Email from H. Pham to P. McCue, I. Tosk, et al., dated 8/17/2009, Bates no. AUSA002203	Notice/Intent	TBD

Ex. No.	Description	Purpose For Which Offered	Sponsor
325.	Email from S. Jackson to M. Taibt and X. Torello dated 7/24/2009, Bates no. AUSA002204	Notice/Intent	S. Jackson
326.	Email from M. Levine to H. Pham dated 9/24/2009, Bates no. AUSA002205	Notice/Intent	TBD
327.	Email from E. Uribe to H. Pham and K. Weiss dated 10/1/2009, Bates no. AUSA002206	Notice/Intent	TBD
328.	Email chain from P. McCue to H. Pham dated 10/2/2009, Bates no. AUSA002207-2208	Notice/Intent	TBD
329.	Email chain from K. Weiss to H. Pham, et al., dated 10/10/2009, Bates nos. AUSA002209-2210	Notice/Intent	TBD
330.	Email chain from E. Uribe to X. Torello, H. Pham, K. Weiss, S. Jackson, et al., dated 11/2/2009, Bates nos. AUSA002211-2213	Notice/Intent	TBD
331.	Email from H. Pham to X. Torello, E. Uribe, and K. Reynolds dated 11/20/2009, Bates nos. AUSA002214-2217	Notice/Intent	TBD
332.	Email from G. Dixon to G. Hidalgo, K. Reynolds, et al., dated 12/14/2009, Bates nos. AUSA002218-2222	Notice/Intent	TBD
333.	Email from H. Pham to S. Jackson, G. Dixon, and E. Uribe dated 12/14/2009, Bates no. AUSA002223	Notice/Intent	TBD
334.	Email from H. Pham to E. Uribe, et al., dated 1/15/2010, Bates nos. AUSA002224-2225	Notice/Intent	TBD
335.	Email from H. Pham to K. Reynolds, E. Uribe, and X. Torello dated 2/1/2010, Bates nos. AUSA002226-2227	Notice/Intent	TBD
336.	Email from H. Pham to L. Vargas, et al., dated 2/12/2012, Bates nos. AUSA002228-2229	Notice/Intent	TBD

Ex. No.	Description	Purpose For Which Offered	Sponsor
337.	Email from H. Pham to K. Reynolds, et al., dated 3/2/2010, Bates nos. AUSA002230-2231	Notice/Intent	TBD
338.	Email chain from H. Pham to K. Reynolds, K. Weiss, and E. Uribe dated 3/5/2010, Bates nos. AUSA002232-2233	Notice/Intent	TBD
339.	Letter to W. Sherry from K. Reynolds dated 3/1/2010, Bates nos. AUSA002234-2235	Notice/Intent	TBD
340.	Email from R. Tafoya to H. Pham dated 12/29/2010, Bates no. AUSA002236	Notice/Intent	TBD
341.	Email chain from H. Pham to K. Reynolds and E. Uribe dated 3/23/2010, Bates nos. AUSA002237-2239	Notice/Intent	TBD
342.	Email chain from H. Pham to H. Nudell, J. Jewett, M. Reinoehl, C. Chapman, A. Cottrell, et al., dated 3/11/2010, Bates no. AUSA002240	Notice/Intent	TBD
343.	Letter to E. Uribe from P. McCue dated 11/29/2012, Bates nos. AUSA002240-2243	Notice/Intent	TBD
344.	Areas financial results AUSA 2045	Damages	Uribe
345.	Areas financial results AUSA 2046	Damages	Uribe
346.	Areas financial results	Damages	Uribe

By: /s/ Daniel T. Rockey

Daniel T. Rockey

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1 Meryl Macklin (CA State Bar No. 115053)

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San Francisco, CA 94105-2994

5 Telephone: (415) 268-2000

6 Facsimile: (415) 268-1999

7 Attorneys for Defendants:

MISSION SAN JOSE AIRPORT, LLC and MISSION YOGURT, INC.

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 AREAS USA SJC, LLC, a California limited
12 liability company,

13 Plaintiff,

14 v.

15 MISSION SAN JOSE AIRPORT, LLC, a
16 Colorado limited liability company, and
MISSION YOGURT, INC., a Colorado
17 corporation,

18 Defendants.

CASE NO. CV11-04487 HRL

**MISSION SAN JOSE AIRPORT, LLC AND
MISSION YOGURT, INC.'S TRIAL
EXHIBIT LIST**

Complaint Filed: September 9, 2011

Trial Date: January 7, 2013

1 Mission has reviewed the Exhibit list of Plaintiff Areas USA SJC, LLS (“Areas”) and
2 incorporates by reference as if fully restated herein each of the exhibits set forth in that list, and
3 reserves the right to use and seek admission of each such document. Mission lists below such
4 additional exhibits as it may use at the trial of this matter.
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254.	Email thread from S. Jackson to C. Chapman, M. Taitt, R. Barry, J. Jewett, et al., dated 5/5/2009, Bates nos. LG000069-70	Notice/Intent	S. Jackson
255.	Email thread from S. Jackson to M. Taitt, and C. Chapman dated 5/4/2009, Bates nos. LG000071-72	Notice/Intent	S. Jackson
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263.	Email chain from B. Albinson to J. Loui dated 9/14/2010, Bates nos. FA000007-11	Damages/Materiality	Custodian
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267.	Email chain from B. Albinson to J. Loui, et al., dated 9/13/2010, Bates nos. FA000031-32	Damages/Materiality	Custodian
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271.	Email chain from R. Franssen to L. Moyaert, et al., dated 8/30/2010, Bates no. FA000039	Damages/Materiality	Custodian
272.	Email chain from G. Hidalgo to B. Albinson, J. Loui, et al., dated 9/13/2010, Bates nos. FA000040-42	Damages/Materiality	Custodian

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275.	Email chain from M. Lofano to J. Loui dated 9/10/2010, Bates nos. FA000049-53	Damages/Materiality	Custodian
276.	Email chain from M. Lofano to J. Loui dated 9/10/2010, Bates nos. FA000054-57	Damages/Materiality	Custodian
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282.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000103-112	Damages/Materiality	Custodian
283.	Email chain from J. Loui to B. Albinson dated 9/14/2010, Bates nos. FA000113-118	Damages/Materiality	Custodian

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296.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000123	Damages/Materiality	S. Jackson/D. Ludwig
297.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000124	Damages/Materiality	S. Jackson/D. Ludwig

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299.	Architectural drawing regarding Schedule of Equipment, Bates no. LG000126	Damages/Materiality	S. Jackson/D. Ludwig
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301.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000128	Damages/Materiality	S. Jackson/D. Ludwig
302.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000129	Damages/Materiality	S. Jackson/D. Ludwig
303.	Architectural drawing regarding Elevations, Bates no. LG000130	Damages/Materiality	S. Jackson/D. Ludwig
304.	Architectural drawing regarding Elevations, Bates no. LG000131	Damages/Materiality	S. Jackson/D. Ludwig
305.	Picture of Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000132	Damages/Materiality	S. Jackson/D. Ludwig
306.	Drawing of cash registers, Bates no. LG000133	Damages/Materiality	S. Jackson/D. Ludwig
307.	Photo of Togo's, Bates no. LG000134	Damages/Materiality	S. Jackson/D. Ludwig
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309.	Annotated drawing regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000136	Damages/Materiality	S. Jackson/D. Ludwig
310.	Annotated drawing regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000137	Damages/Materiality	S. Jackson/D. Ludwig
311.	Photo of materials, chair, and lamp, Bates no. LG000138	Damages/Materiality	S. Jackson/D. Ludwig

Ex. No.	Description	Purpose For Which Offered	Sponsor
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313.	Drawings regarding Fresh Choice, Togo's, and Sip Savvy, Bates no. LG000150-160	Damages/Materiality	S. Jackson/D. Ludwig
314.	New SJC Concept Study drawing, Bates no. LG000161	Damages/Materiality	S. Jackson/D. Ludwig
315.	New SJC Concept Study drawing, Bates no. LG000162	Damages/Materiality	S. Jackson/D. Ludwig
316.	Architectural drawing regarding Fresh Choice, Sip Savvy, and Togo's, Bates no. LG000163	Damages/Materiality	S. Jackson/D. Ludwig
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323.	Email from M. Taitt to E. Uribe and X. Torello dated 6/18/2009, Bates no. AUSA0002202	Notice/Intent	Uribe
324.	Email from H. Pham to P. McCue, I. Tosk, et al., dated 8/17/2009, Bates no. AUSA002203	Notice/Intent	TBD

Ex. No.	Description	Purpose For Which Offered	Sponsor
325.	Email from S. Jackson to M. Taitt and X. Torello dated 7/24/2009, Bates no. AUSA002204	Notice/Intent	S. Jackson
326.	Email from M. Levine to H. Pham dated 9/24/2009, Bates no. AUSA002205	Notice/Intent	TBD
327.	Email from E. Uribe to H. Pham and K. Weiss dated 10/1/2009, Bates no. AUSA002206	Notice/Intent	TBD
328.	Email chain from P. McCue to H. Pham dated 10/2/2009, Bates no. AUSA002207-2208	Notice/Intent	TBD
329.	Email chain from K. Weiss to H. Pham, et al., dated 10/10/2009, Bates nos. AUSA002209-2210	Notice/Intent	TBD
330.	Email chain from E. Uribe to X. Torello, H. Pham, K. Weiss, S. Jackson, et al., dated 11/2/2009, Bates nos. AUSA002211-2213	Notice/Intent	TBD
331.	Email from H. Pham to X. Torello, E. Uribe, and K. Reynolds dated 11/20/2009, Bates nos. AUSA002214-2217	Notice/Intent	TBD
332.	Email from G. Dixon to G. Hidalgo, K. Reynolds, et al., dated 12/14/2009, Bates nos. AUSA002218-2222	Notice/Intent	TBD
333.	Email from H. Pham to S. Jackson, G. Dixon, and E. Uribe dated 12/14/2009, Bates no. AUSA002223	Notice/Intent	TBD
334.	Email from H. Pham to E. Uribe, et al., dated 1/15/2010, Bates nos. AUSA002224-2225	Notice/Intent	TBD
335.	Email from H. Pham to K. Reynolds, E. Uribe, and X. Torello dated 2/1/2010, Bates nos. AUSA002226-2227	Notice/Intent	TBD
336.	Email from H. Pham to L. Vargas, et al., dated 2/12/2012, Bates nos. AUSA002228-2229	Notice/Intent	TBD

Ex. No.	Description	Purpose For Which Offered	Sponsor
337.	Email from H. Pham to K. Reynolds, et al., dated 3/2/2010, Bates nos. AUSA002230-2231	Notice/Intent	TBD
338.	Email chain from H. Pham to K. Reynolds, K. Weiss, and E. Uribe dated 3/5/2010, Bates nos. AUSA002232-2233	Notice/Intent	TBD
339.	Letter to W. Sherry from K. Reynolds dated 3/1/2010, Bates nos. AUSA002234-2235	Notice/Intent	TBD
340.	Email from R. Tafoya to H. Pham dated 12/29/2010, Bates no. AUSA002236	Notice/Intent	TBD
341.	Email chain from H. Pham to K. Reynolds and E. Uribe dated 3/23/2010, Bates nos. AUSA002237-2239	Notice/Intent	TBD
342.	Email chain from H. Pham to H. Nudell, J. Jewett, M. Reinoehl, C. Chapman, A. Cottrell, et al., dated 3/11/2010, Bates no. AUSA002240	Notice/Intent	TBD
343.	Letter to E. Uribe from P. McCue dated 11/29/2012, Bates nos. AUSA002240-2243	Notice/Intent	TBD
344.	Areas financial results AUSA 2045	Damages	Uribe
345.	Areas financial results AUSA 2046	Damages	Uribe
346.	Areas financial results	Damages	Uribe

By: /s/ Daniel T. Rockey

Daniel T. Rockey

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **1840 Century Park East, Suite 1900, Los Angeles CA 90067.**

On December 4, 2012, I served **JOINT PRETRIAL STATEMENT AND REPORT** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Daniel Rockey
Meryl Macklin
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105

Attorney for Defendant

Tel: (415) 286-1986
Fax: (415) 268-1999

☐ **(BY FEDERAL EXPRESS)**

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for delivery by Federal Express. Under the practice it would be deposited with Federal Express on that same day with postage thereon fully prepared at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if delivery by Federal Express is more than one day after date of deposit with Federal Express.

☐ **(BY U.S. MAIL)**

I served the above-mentioned document by enclosing it in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing.

☒ **(BY CM/ECF)**

Pursuant to CM/ECF System, registration as a CM/ECF user constitutes service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/CMF system.

☒ **(FEDERAL)**

I declare under penalty of perjury that the foregoing is true and correct, and that I am Employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 4, 2012 at Los Angeles, California.



Harpo Sidhu